

REMARKS

Applicants request favorable reconsideration of the subject application in view of the foregoing amendments and following remarks.

Initially, Applicants would like to thank Examiners Shaffer and Robert for the courtesies extended to Applicants' representatives during the personal interview conducted on May 14, 2007. During the interview, each of the outstanding rejections and objections set forth in the Office Action of November 30, 2007 was discussed, and an agreement with respect thereto was reached.

All of the changes agreed upon during the interview have been incorporated by this amendment, and the particulars are set forth in the response section below.

Claim Status

Claims 41-50, 62-65 and 68-78 and 80-83 remain pending in the subject application. By this amendment, claims 79 and 84-314 have been cancelled, and independent claims 41, 47, 63, 68, 73, 75 and 77 have been amended.

Pending Objections & Rejections

(1) Claims 41-50, 62-65 and 68-83 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 1-36 of copending application no. 10/774,135 and claims 1-40 of copending application no. 11/299,115;

(2) the drawings were objected to under 37 CFR 1.83(a) for not showing every feature of the invention specified in the claims;

(3) the specification was objected to as failing to provide proper antecedent basis for the claimed subject matter;

(4) claims 77-80 and 83 were rejected under 35 U.S.C. § 101 as lacking patentable utility;

(5) claim 79 was rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement;

(6) claims 41-44, 73, 74, 76, 81, 82 and 84-314 were rejected under 35 U.S.C. § 102(b) as being anticipated by DE 299 114 U 1 to Aesculap;

(7) claims 45-49, 62-64, 68-72 and 75 were rejected under 35 U.S.C. § 103(a) as being obvious over Aesculap in view of U.S. Patent No. 5,609,635 to Michelson;

(8) claims 50 and 65 were rejected under 35 U.S.C. § 103(a) as being obvious over Aesculap in view of Michelson and in further view of U.S. Patent No. 6,113,637 to Gill et al.;

(9) claims 77-80 and 83 were rejected under 35 U.S.C. § 103(a) as being obvious over Aesculap in view of U.S. Patent No. 5,246,458 to Graham; and

(10) claims 77-80 and 83 were rejected under 35 U.S.C. § 103(a) as being obvious over Aesculap in view of U.S. Patent No. 6,706,068 to Ferree.

These objections and rejections are respectfully traversed.

Response to Objections & Rejections

(1) Regarding the provisional obviousness-type double patenting rejection of claims 41-50, 62-65 and 68-83, the Examiners agreed that in the event that these claims of the present application issue prior to the claims of the copending applications, the

double patenting rejection would be withdrawn and applied to the claims in the co-pending applications to the extent that the rejections remain applicable to those claims.

(2) In response to the drawing objection, Applicants proposed amending claim 77 to recite that the bone screw is *engageable*. The Examiners agreed that this would obviate the drawing objection and accordingly, the change has been made. Withdrawal of the drawing objection is respectfully requested.

(3) In response to the objection to the specification, Applicants agreed to cancel claims 84-314 rendering this objection moot.

(4) In response to the rejection of Claims 77-80 and 83 under 35 U.S.C. § 101, Claim 77 has been amended in the manner suggested by the Examiner. Reconsideration and withdrawal of the rejection under 35 U.S.C. § 101 is respectfully requested.

(5) In response to the rejection under 35 U.S.C. § 112, first paragraph, claim 79 has been cancelled, thus rendering this rejection moot.

(6)-(10) In response to the rejection under 35 U.S.C. §§ 102 and 103, Applicants present herein the proposed amendments to the claims that were discussed during the personal interview. At the interview, it was agreed that Aesculap does not teach, at least, a width tapering in a direction parallel to a bearing surface, a feature now recited in each of the independent claims.

Applicants further submit that the secondary citations do not compensate for this deficiency with respect to Aesculap. Michelson relates to a lordotic interbody spinal fusion implant and was cited for teaching openings for bone in-growth to enhance stability of the implant within the bone. Graham relates to an artificial disc and was cited for teaching use of screws to secure the artificial disk within a spinal column. Ferree

relates to an artificial disc replacement and was cited for teaching screws to secure a flange of the artificial disc. Accordingly, reconsideration and withdrawal of these rejections is respectfully solicited.

CONCLUSION

Applicants submit that the independent claims 41, 47, 63, 68, 73, 75 and 77 are allowable for the reasons set forth above. The dependent claims are allowable for at least the reasons given for the independent claims, as well as for the additional features they recite. Individual consideration of the dependent claims is respectfully solicited.

In view of the above amendments and remarks, Applicants submit that the application is now in allowable form. Therefore, early passage to issue is respectfully solicited.

Applicants' undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 530-1010. All correspondence should continue to be directed to the correspondence address of record.

Respectfully submitted,

/Ann M. McCamey/

Attorney for Applicants
Ann M. McCamey
Registration No. 57,016

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
Facsimile: (212) 218-2200